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**Testimony Before House Subcommittee on Housing and Community
Opportunity**

Presented by Ohio State Representative Bob Gibbs, 97th House District
Thursday, August 18, 2005

Village of Hebron Administration Building, Hebron, Ohio

Chairman Ney and honorable members of the House Subcommittee on Housing and Community Opportunity, thank you for the opportunity to testify today on legislative action being taken here in the State of Ohio in response to the U.S. Supreme Court decision, *Kelo v. City of New London*. The U.S. Supreme Court 5-4 decision allows for eminent domain takings for private sector development and provides a wide range of discretion to state and local governments to decide how eminent domain powers should be employed in their jurisdiction. I believe this decision opens the floodgate for eminent domain abuse. I and other members of the Ohio General Assembly realized early on that it was imperative that legislative action be taken immediately to ensure fair and uniform enforcement of eminent domain powers and protect private property rights in our state.

Eminent domain has been a necessary tool to provide public infrastructure projects for the public good. However, the Kelo decision allows for eminent domain proceedings for private sector development that ultimately enhances the tax base, making the argument it is for the public good because of increased tax revenues. This argument is appalling; essentially the government is saying revenues to a taxing jurisdiction are paramount to private property rights. This contradicts the founding principles this nation was founded upon. Currently, Ohio law provides for eminent domain authority to be used to eliminate slums and blighted neighborhoods. A strong case can be made that with this provision a Kelo type provision is not necessary, but only opens the door for eminent domain abuse. The Kelo decision will take our free market system out of private development projects. Two weeks ago I received an email from a citizen in northeast Ohio, he stated, a large insurance company in northeast Ohio made an offer to private property owners to buy their land for their office complex expansion. The landowners refused the offer and now the corporate giant is pursuing the local jurisdiction to use eminent domain.

Under current eminent domain authority the judicial system by a jury will determine compensation. This makes sense when property is being developed for roads and utilities that serve a greater public purpose and no private entity will be the sole beneficiary. When the property remains in the private sector what basis should be used for compensation under Kelo type takings? Prior to Kelo our free and open competitive market determined what the property is worth and protected the rights of the landowners.

Since the *Kelo* decision was handed down in June, I have been working closely with other members of the Ohio General Assembly, including State Senator Tim Grendell of Geauga County and State Senator Kimberly Zurz of Summit County, to enact legislation which will prohibit this gross expansion of government on private property. We have already hosted a series of work group meetings, inviting representatives from a variety of backgrounds, including agriculture, commercial and residential development, government and members of the public to discuss solutions to the *Kelo* dilemma. From this work group, Senator Tim Grendall and I have introduced companion legislation in both chambers of the Ohio General Assembly with bi-partisan support that enacts a moratorium on *Kelo* type eminent domain and “urban blight” takings until December 31, 2006. In addition, this legislation would create a Legislative Study Committee, comprising members of the General Assembly, representatives of the executive branch, representatives of the agriculture community, commercial and residential developers, and others, to study permanent solutions to this matter.

In Ohio we have already experienced what I consider abuse of eminent domain authority. In Lakewood, Ohio eminent domain was tried using the blighted neighborhood definition. Their definition of the law determined the neighborhood is blighted because the residences lack air conditioning and attached garages. These local homeowners were paying taxes and this neighborhood would not be considered blighted by any reasonable and responsible individuals who are not blinded by the potential of increased tax revenue. Fortunately, the citizens were successful in a referendum and prevented the private property takings. In Norwood, Ohio the Court of Appeals in Hamilton County ruled that an eminent domain proceeding did not violate the law and was not unconstitutional. The Court upheld a lower court’s ruling that an urban renewal plan submitted by an independent company substantially complied with the requirements of local law, when the city council amended the plan to include appropriate details and the city council did not abuse its discretion in determining that the renewal area was deteriorating, when the plan included elements that allowed a determination that the area was deteriorating under the definition provided by local law. In this case an emergency was declared; therefore a referendum was not an option.

Ultimately, the solution to the problem in Ohio will most likely have to be corrected with the implementation of an amendment to the Ohio Constitution. Section 19 of Article I and Section 3 of Article XVIII on the Constitution of the State of Ohio clearly identify who was the power of eminent domain and under what circumstances eminent domain may be applied. In addition, the Ohio General Assembly has passed a number of legislative actions which have extended eminent domain power beyond those in the Ohio Constitution.

However, as it clearly states in the Ohio Constitution, private property in Ohio shall be held inviolate to the government. The *Kelo* decision clearly indicates the opinion of a slight majority of the U.S. Supreme Court believe that private property is no longer inviolate to the government. Rather, it was the opinion of the high court that private property is subservient to the needs of the government, because expansion of taxable property is in the public welfare.

Under Ohio's home rule authority, municipalities would be more likely to use Kelo type eminent domain proceedings. Current law restricts counties and townships.

It is the opinion of everyone who is participating in the work group that Ohio should not rush into a quick solution that could cause more problems than it resolves. Rather, we feel it best to thoroughly research and identify the problems that currently exist in Ohio Law, propose and debate possible solutions, and make a formal recommendation to the members of the General Assembly as to the solution that is in the best interest of all parties involved.

I strongly feel that eminent domain authority should be used judiciously and ONLY for public infrastructure projects and common carrier easements. In addition, the definition of blighted neighborhoods needs to be narrowly defined and the rights of private property owners needs to be strengthened. For example, property owners must pay their own litigation costs in eminent domain proceedings. In many cases property owners cannot afford the legal and other costs associated with challenging an eminent domain action on public use grounds. Greater protections for property owners will help prevent eminent domain abuse.

I want to thank and commend Congressman Ney for his work and commitment to resolve this complex issue and protect the Constitutional rights of our citizens. However, I caution the committee to be careful not to overreact and limit states rights to regulate eminent domain authority, but only address Kelo type proceedings. In my work thus far on this issue I have learned there are many nuances and complexities and a "knee jerk" reaction legislatively to the Kelo decision will create unexpected and unfavorable results.

Chairman Ney and members of the Subcommittee on Housing and Community Opportunity, thank you for the opportunity to testify today. I would be happy to answer any questions you may have.

Constitution of the State of Ohio

Article I: Bill of Rights

§ 1.19 Inviolability of private property (1851)

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefore shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Article XVIII: Municipal Corporations

§ 18.03 Powers (1912)

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.